

EXHIBIT B

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JOSE ALVARADO, JIMENA
13 ALVARADO, ERIKA ALVARADO,
and MARCOS ALVARADO, in each
14 case individually and as successor in
interest to Delfino Avila, deceased,

15 Plaintiffs,

16 vs.

17 CITY OF SAN BERNARDINO; ZACK
EWING; CARLA GUTIERREZ; and
18 DOES 3-10, inclusive,

19 Defendants.
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Case No. 5:24-cv-00088-JGB-SHK

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. Unreasonable Search and Seizure—Unlawful Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)
5. Municipal Liability – Inadequate Training (42 U.S.C. § 1983)
6. Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
7. Municipal Liability – Ratification (42 U.S.C. § 1983)
8. False Arrest/ False Imprisonment
9. Battery (wrongful death and survival)
10. Negligence (wrongful death and survival)
11. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR DAMAGES**

2 COME NOW Plaintiffs JOSE ALVARADO, JIMENA ALVARADO,
3 ERIKA ALVARADO, AND MARCOS ALVARADO, individually and as
4 successors in interest to Delfino Avila, deceased, for their Complaint against
5 Defendants CITY OF SAN BERNARDINO, ZACK EWING, CARLA
6 GUTIERREZ, and DOES 3-10, inclusive, and allege as follows:

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8 **JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
10 and 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the
11 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
12 Amendments of the United States Constitution. This Court has supplemental
13 jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. §
14 1367(a), because those claims are so related to the federal claims that they form part
15 of the same case or controversy under Article III of the United States Constitution.

16 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
17 Defendants reside in this district and all incidents, events, and occurrences giving
18 rise to this action occurred in this district.

19
20 **INTRODUCTION**

21 3. This civil rights and state tort action seeks compensatory and punitive
22 damages from Defendants for violating various rights under the United States
23 Constitution and state law in connection with the fatal officer-involved shooting of
24 Plaintiffs' father, Delfino Avila ("DECEDENT"), on November 30, 2022.

PARTIES

4. At all relevant times, DECEDENT was an individual residing in San Bernardino, California.

5. Plaintiff JOSE ALVARADO (“JOSE”) is an individual residing in San Bernardino, California and is the natural son of DECEDENT. JOSE sues in his individual capacity as the son of DECEDENT and also as a successor in interest to DECEDENT. JOSE seek both survival and wrongful death damages under federal and state law.

6. Plaintiff MARCOS ALVARADO (“MARCOS”) is an individual residing in San Bernardino, California and is the natural son of DECEDENT. MARCOS sues in his individual capacity as the son of DECEDENT and also as a successor in interest to DECEDENT. MARCOS seeks both survival and wrongful death damages under federal and state law.

7. Plaintiff ERIKA ALVARADO (“ERIKA”) is an individual residing in San Bernardino, California and is the natural daughter of DECEDENT. ERIKA sues in her individual capacity as the daughter of DECEDENT and also as a successor in interest to DECEDENT. ERIKA seeks both survival and wrongful death damages under federal and state law.

8. Plaintiff JIMENA ALVARADO (“JIMENA”) is an individual residing in San Bernardino, California and is the natural daughter of DECEDENT. JIMENA sues in her individual capacity as the daughter of DECEDENT and also as a successor in interest to DECEDENT. JIMENA seeks both survival and wrongful death damages under federal and state law.

9. Defendant ZACK EWING (“EWING”) is a Police officer working for the SBPD. At all relevant times, EWING was acting under color of law within the course and scope of their duties as a police officer for the SBPD. EWING was

1 acting with the complete authority and ratification of his principal, Defendant CITY,
2 at all relevant times.

3 10. Defendant CARLA GUTIERREZ (“GUTIERREZ”) is a Police officer
4 working for the SBPD. At all relevant times, GUTIERREZ was acting under color
5 of law within the course and scope of their duties as a police officer for the SBPD.
6 GUTIERREZ was acting with the complete authority and ratification of her
7 principal, Defendant CITY, at all relevant times.

8 11. At all relevant times, Defendant CITY OF SAN BERNARDINO
9 (“CITY”) is and was a municipal corporation existing under the laws of the State of
10 California. CITY is a chartered subdivision of the State of California with the
11 capacity to be sued. CITY is responsible for the actions, omissions, policies,
12 procedures, practices, and customs of its various agents and agencies, including the
13 San Bernardino Police Department and its agents and employees. At all relevant
14 times, Defendant CITY was responsible for assuring that the actions, omissions,
15 policies, procedures, practices, and customs of the San Bernardino Police
16 Department and its employees and agents complied with the laws of the United
17 States and of the State of California. At all relevant times, CITY was the employer
18 of Defendants EWING, GUTIERREZ, and DOES 3-10.

19 12. Defendants DOES 3-7 (“DOE OFFICERS”) are, and were at the time
20 of this incident, police officers working for the San Bernardino Police Department.
21 At all relevant times, DOE OFFICERS were acting under color of law within the
22 course and scope of their duties as police officers for the San Bernardino Police
23 Department. At all relevant times, DOE OFFICERS were acting with the complete
24 authority and ratification of their principal, Defendant CITY.

25 13. Defendants DOES 8-10 are, and were at the time of this incident,
26 managerial, supervisory, and policymaking employees of the San Bernardino
27 Police Department, who were acting under color of law within the course and scope
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1 of their duties as managerial, supervisory, and policymaking employees for the San
2 Bernardino Police Department. At all relevant times, DOES 8-10 were acting with
3 the complete authority and ratification of their principal, Defendant COUNTY.

4 14. On information and belief, EWING, GUTIERREZ, and DOES 3-10
5 were residents of the County of San Bernardino.

6 15. In doing the acts and failing and omitting to act as hereinafter
7 described, Defendants EWING, GUTIERREZ, and DOE OFFICERS were acting on
8 the implied and actual permission and consent of Defendants DOES 8-10 and the
9 CITY.

10 16. In doing the acts and failing and omitting to act as hereinafter
11 described, Defendants EWING, GUTIERREZ, and DOES 3-10 were acting on the
12 implied and actual permission and consent of the CITY.

13 17. The true names and capacities, whether individual, corporate,
14 association or otherwise of Defendants DOES 3-10, inclusive, are unknown to
15 Plaintiffs, who otherwise sue these Defendants by such fictitious names. Plaintiffs
16 will seek leave to amend this complaint to show the true names and capacity of
17 these Defendants when they have been ascertained. Each of the fictitiously named
18 Defendants are responsible in some manner for the conduct or liabilities alleged
19 herein.

20 18. At all times mentioned herein, each and every defendant was the agent
21 of each and every other defendant and had the legal duty to oversee and supervise
22 the hiring, conduct, and employment of each and every defendant.

23 19. All of the acts complained of herein by Plaintiffs against Defendants
24 were done and performed by said Defendants by and through their authorized
25 agents, servants, and/or employees, all of whom at all relevant times herein were
26 acting within the course, purpose, and scope of said agency, service, and/or
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1 employment capacity. Moreover, Defendants and their agents ratified all of the acts
2 complained of herein.

3 20. EWING, GUTIERREZ, and DOES 3-10 are sued in their individual
4 capacity.

5 21. On or around May 25, 2023, Plaintiffs filed comprehensive and timely
6 claims for damages with the City of San Bernardino and the City of San Bernardino
7 pursuant to applicable sections of the California Government Code. The claims
8 were rejected by operation of law.

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10 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11 22. Plaintiffs repeat and re-allege each and every allegation in the prior
12 paragraphs of this Complaint with the same force and effect as if fully set forth
13 herein.

14 23. On November 30, 2022, EWING and GUTIERREZ responded to a call
15 regarding an unidentified male setting fire to a palm tree. EWING and GUTIERREZ
16 contacted DECEDENT in a driveway of a residence. At that time, DECEDENT
17 was not setting any fires or committing any serious or violent crime. DECEDENT
18 walked away from the officers, into a backyard.

19 24. EWING and GUTIERREZ each deployed their Taser at DECEDENT,
20 which escalated the situation. A reasonably well-trained police officer in the
21 position of EWING and GUTIERREZ would have known that DECEDENT was
22 mentally ill or experiencing a mental crisis, and would have known that the Taser
23 usage would escalate the situation involving DECEDENT. Before the officers
24 deployed their Tasers, the officers failed to give DECEDENT a verbal warning that
25 he would be Tased. The officers also failed to give DECEDENT sufficient
26 commands and time to comply with those commands.

27 25. After the officers deployed their Tasers against DECEDENT, EWING
28 fired lethal shots at DECEDENT. Prior to shooting, EWING failed to give

1 DECEDENT a verbal warning that deadly force would be used, even though it
2 would have been feasible to do so. GUTIERREZ integrally participated in and
3 failed to intervene in the shooting, and GUTIERREZ had a realistic opportunity and
4 responsibility to intervene.

5 26. The uses of force by EWING and GUTIERREZ, including the Taser
6 deployment and the lethal shots fired by EWING, were negligent, excessive,
7 unreasonable, unjustified, inappropriate, and contrary to basic police training.
8 DECEDENT posed no immediate threat of death or serious bodily injury to any
9 person during this incident, including during the use of the uses of force.

10 DECEDENT held a wooden cross or object during this incident, and he was not
11 armed with a knife, gun or other weapon and did not have the present ability to
12 immediately cause death or serious bodily injury to any person. EWING and
13 GUTIERREZ failed to properly handle the situation involving a person who is
14 mentally ill or experiencing a mental health crisis.

15 27. Prior to the shooting, the officers engaged in pre-shooting negligent
16 tactics, including escalating a situation involving a mentally ill individual, failing to
17 create an appropriate tactical plan, failing to communicate amongst themselves,
18 failing to give verbal warnings that force would be used.

19 28. Plaintiffs are DECEDENT's successors in interest as defined in Section
20 377.11 of the California Code of Civil Procedure and each succeed to
21 DECEDENT's interest in this action as the natural adult children of DECEDENT.
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FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ)

29. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

30. When Defendants EWING and GUTIERREZ trained their weapons on DECEDENT, he was not free to leave. EWING and GUTIERREZ struck DECEDENT with the Taser, and EWING struck DECEDENT with lethal rounds, thereby seizing him. After the shooting, EWING and GUTIERREZ handcuffed DECEDENT. EWING and GUTIERREZ did not observe DECEDENT commit any crime, and DECEDENT was not engaged in any criminal activity at the time of the seizure, the use of force, or the handcuffing. In addition to the detention itself being unreasonable, the scope and matter of the detention was also unreasonable.

31. When Defendants EWING and GUTIERREZ engaged in the foregoing conduct, detaining DECEDENT without reasonable suspicion and then arresting him without probable cause, they violated his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

32. The conduct of Defendants EWING and GUTIERREZ was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and therefore warrants the imposition of exemplary and punitive damages as to Defendants EWING and GUTIERREZ.

33. At all relevant times, EWING and GUTIERREZ were acting under color of state law.

34. As a result of their misconduct, Defendants EWING and GUTIERREZ are liable for DECEDENT's injuries, either because they were integral participants

1 in the wrongful detention and arrest, or because they failed to intervene to prevent
2 these violations.

3 35. As a result of the foregoing, DECEDENT suffered great physical pain
4 and emotional distress up to the time of his death after the shooting, and also
5 suffered a loss of enjoyment of life, loss of life, and loss of earning capacity. All
6 Plaintiffs bring this claim as successors in interest to DECEDENT and seek survival
7 damages, costs, and attorney's fees under this claim.

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9 **SECOND CLAIM FOR RELIEF**

10 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

11 (Against Defendants EWING and GUTIERREZ)

12 36. Plaintiffs repeat and re-allege each and every allegation in the prior
13 paragraphs of this Complaint with the same force and effect as if fully set forth
14 herein.

15 37. EWING and GUTIERREZ's unjustified tasing of DECEDENT, as well
16 as EWING's use of lethal force against DECEDENT, deprived DECEDENT of his
17 right to be secure in his person against unreasonable searches and seizures as
18 guaranteed to him under the Fourth Amendment to the United States Constitution
19 and applied to state actors by the Fourteenth Amendment.

20 38. The uses of force by EWING and GUTIERREZ, including the Taser
21 deployment and the lethal shots, were excessive, unreasonable, unjustified,
22 inappropriate, and contrary to basic police training. DECEDENT posed no
23 immediate threat of death or serious bodily injury to any person during this incident,
24 including during the use of the uses of force. DECEDENT had a wooden cross or
25 object at certain points during this incident, and he was not armed with a knife, gun
26 or other weapon.

1 39. EWING and GUTIERREZ failed to give DECEDENT a verbal
2 warning before deploying their Tasers, even though it would have been feasible to
3 do so. It also would have been feasible for EWING to give DECEDENT a verbal
4 warning that deadly force would be used prior to shooting him, but EWING failed to
5 do so, in violation of basic police training and standards.

6 40. The officers escalated the situation when they Tased DECEDENT. A
7 reasonably well-trained officer in the position of EWING and GUTIERREZ would
8 have known that DECEDENT was mentally ill or experiencing a mental crisis and
9 would have known, based on police training, that deploying a Taser against a person
10 who is mentally ill or experiencing a mental crisis would escalate the situation.

11 41. As a result of their misconduct, Defendants EWING and GUTIERREZ
12 are liable for DECEDENT's injuries, either because they were integral participants
13 in the uses of excessive force, or because they failed to intervene to prevent these
14 violations.

15 42. The conduct of Defendants EWING and GUTIERREZ was willful,
16 wanton, malicious, and done with reckless disregard for the rights and safety of
17 DECEDENT, and therefore warrants the imposition of exemplary and punitive
18 damages as to Defendants EWING and GUTIERREZ.

19 43. As a result of the foregoing, DECEDENT suffered great physical pain
20 and emotional distress up to the time of his death after the shooting, loss of
21 enjoyment of life, loss of life, and loss of earning capacity. Plaintiffs bring this
22 claim as successors in interest to DECEDENT, and seek survival damages for the
23 violation of DECEDENT's rights. All Plaintiffs further seek attorney's fees and
24 costs under this claim.

THIRD CLAIM FOR RELIEF

Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ)

44. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

45. After being struck by the Taser and shot by lethal rounds, DECEDENT was immobile, bleeding profusely, and in obvious and critical need of emergency medical care and treatment. Defendants EWING and GUTIERREZ did not timely summon medical care or permit medical personnel to treat DECEDENT. The delay of medical care to DECEDENT caused DECEDENT extreme physical and emotional pain and suffering and was a contributing cause of DECEDENT's death.

46. The denial of medical care by the defendant officers deprived DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

47. Defendants EWING and GUTIERREZ knew that failure to provide timely medical treatment to DECEDENT could result in further significant injury or the unnecessary and wanton infliction of pain, but disregarded that serious medical need, causing DECEDENT great bodily harm and death.

48. The conduct of EWING and GUTIERREZ was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and therefore warrants the imposition of exemplary and punitive damages as to Defendants EWING and GUTIERREZ.

49. As a result of their misconduct, Defendants EWING and GUTIERREZ are liable for DECEDENT's injuries, either because they were integral participants

1 in the denial of medical care, or because they failed to intervene to prevent these
2 violations.

3 50. As a result of the foregoing, DECEDENT suffered great physical pain
4 and emotional distress up to the time of his death, loss of enjoyment of life, loss of
5 life, and loss of earning capacity. All Plaintiffs bring this claim as successors in
6 interest to DECEDENT, and seek survival damages for the violation of
7 DECEDENT's rights. Plaintiffs further seek attorney's fees and costs under this
8 claim.

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10 **FOURTH CLAIM FOR RELIEF**

11 **Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)**

12 (Against Defendants EWING and GUTIERREZ and DOE OFFICERS)

13 51. Plaintiffs repeat and re-allege each and every allegation in the prior
14 paragraphs of this Complaint with the same force and effect as if fully set forth
15 herein.

16 52. Plaintiffs had a cognizable interest under the Due Process Clause of the
17 Fourteenth Amendment of the United States Constitution to be free from state
18 actions that deprive them of life, liberty, or property in such a manner as to shock
19 the conscience, including but not limited to unwarranted state interference in
20 Plaintiffs' familial relationship with their father, DECEDENT.

21 53. The aforementioned actions of EWING and GUTIERREZ, including
22 escalating a situation involving a person who was having a mental crisis, unlawfully
23 detaining and arresting DECEDENT, Tasing him, shooting him with a lethal
24 firearm, and denying him medical care, along with other undiscovered conduct,
25 shock the conscience, in that they acted with deliberate indifference to the
26 constitutional rights of DECEDENT and Plaintiffs, and with purpose to harm
27 unrelated to any legitimate law enforcement objective.
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1 54. The defendant officers had time to deliberate during this incident
2 before deploying their Tasers and before EWING deployed his lethal firearm,
3 including having time and opportunity to give DECEDENT a verbal warning that
4 force would be used, time to give DECEDENT further commands and time to
5 comply with these commands, and time to evaluate the reasonableness and necessity
6 of using force against DECEDENT. DECEDENT was not armed with a gun, knife,
7 or other weapon during this incident, and he posed no immediate threat of death or
8 serious bodily injury to any person at the time of the Tasing and the shooting.

9 55. EWING and GUTIERREZ thus violated the substantive due process
10 rights of Plaintiffs to be free from unwarranted interference with his familial
11 relationship with DECEDENT, his father.

12 56. As a direct and proximate cause of the acts of EWING and
13 GUTIERREZ, Plaintiffs suffered emotional distress, mental anguish, and pain.
14 Plaintiffs have also been deprived of the life-long love, companionship, comfort,
15 support, society, care, and sustenance of DECEDENT, and will continue to be so
16 deprived for the remainder of their natural lives.

17 57. The conduct of EWING and GUTIERREZ was willful, wanton,
18 malicious, and done with reckless disregard for the rights and safety of DECEDENT
19 and Plaintiffs, and therefore warrants the imposition of exemplary and punitive
20 damages as to Defendants EWING and GUTIERREZ.

21 58. All Plaintiffs bring this claim individually and seek wrongful death
22 damages under this claim for the interference with their familial relationship with
23 DECEDENT. Plaintiffs seek attorney's fees and costs under this claim.

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FIFTH CLAIM FOR RELIEF

Municipal Liability – Failure to Train (42 U.S.C. § 1983)

(Against Defendants CITY and DOES 8-10)

59. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

60. Defendants EWING and GUTIERREZ acted under color of law.

61. The acts of Defendants EWING and GUTIERREZ deprived DECEDENT and Plaintiffs of their particular rights under the United States Constitution.

62. The training policies of Defendant CITY was not adequate to train its police officers to handle the usual and recurring situations with which they must deal.

63. Defendant CITY was deliberately indifferent to the obvious consequences of its failure to train its police officers adequately.

64. The failure of Defendant CITY to provide adequate training caused the deprivation of DECEDENT's rights by Defendants EWING and GUTIERREZ; that is, the supervisory and municipal defendants' failures to train is so closely related to the deprivation of DECEDENT's rights as to be the moving force that caused the ultimate injury.

65. By reason of the aforementioned acts and omissions, Plaintiffs have suffered loss of the love, companionship, affection, comfort, care, society, training, guidance, and past and future support of DECEDENT. The aforementioned acts and omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life, and death.

66. Accordingly, Defendants CITY and DOES 8-10 each are liable to Plaintiff for compensatory damages under 42 U.S.C. § 1983.

1 at all times material herein knew or reasonably should have
2 known had dangerous propensities for abusing their authority
3 and for using excessive force;

4 (e) Inadequately supervising, training, controlling, assigning, and
5 disciplining CITY police officers, including EWING and
6 GUTIERREZ, whom Defendant CITY knew or in the exercise of
7 reasonable care should have known had the aforementioned
8 propensities and character traits;

9 (f) Maintaining grossly inadequate procedures for reporting,
10 supervising, investigating, reviewing, disciplining and
11 controlling misconduct by CITY police officers;

12 (g) Failing to adequately discipline CITY police officers,
13 respectively, for the above-referenced categories of misconduct,
14 including “slaps on the wrist,” discipline that is so slight as to be
15 out of proportion to the magnitude of the misconduct, and other
16 inadequate discipline that is tantamount to encouraging
17 misconduct;

18 (h) Announcing that unjustified shootings are “within policy,”
19 including shootings that were later determined in court to be
20 unconstitutional;

21 (i) Even where shootings are determined in court to be
22 unconstitutional, refusing to discipline, terminate, or retrain the
23 officers/deputies involved;

24 (j) Encouraging, accommodating, or facilitating a “blue code of
25 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
26 or simply “code of silence,” pursuant to which police officers do
27 not report other officers’ errors, misconduct, or crimes. Pursuant
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1 to this code of silence, if questioned about an incident of
2 misconduct involving another officer, while following the code,
3 the officer being questioned will claim ignorance of the other
4 officers' wrongdoing; and

5 (k) Maintaining a policy of inaction and an attitude of indifference
6 towards soaring numbers of police shootings and other uses of
7 force.

8 73. By reason of the aforementioned acts and omissions, Plaintiffs have
9 suffered loss of the love, companionship, affection, comfort, care, society, training,
10 guidance, and past and future support of DECEDENT. The aforementioned acts and
11 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
12 and death.

13 74. Defendants CITY and DOES 8-10, together with various other
14 officials, whether named or unnamed, had either actual or constructive knowledge
15 of the deficient policies, practices and customs alleged in the paragraphs above.
16 Despite having knowledge as stated above, these defendants condoned, tolerated and
17 through actions and inactions thereby ratified such policies. Said defendants also
18 acted with deliberate indifference to the foreseeable effects and consequences of
19 these policies with respect to the constitutional rights of DECEDENT, Plaintiffs,
20 and other individuals similarly situated.

21 75. By perpetrating, sanctioning, tolerating and ratifying the outrageous
22 conduct and other wrongful acts, CITY and DOES 8-10, acted with intentional,
23 reckless, and callous disregard for the life of DECEDENT and for DECEDENT's
24 and Plaintiffs' constitutional rights. Furthermore, the policies, practices, and
25 customs implemented, maintained, and still tolerated by Defendants CITY and
26 DOES 8-10, were affirmatively linked to and were a significantly influential force
27 behind the injuries of DECEDENT and Plaintiffs.
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1 85. By reason of the aforementioned acts and omissions, Plaintiffs have
2 been deprived of the life-long love, companionship, comfort, support, society, care
3 and sustenance of DECEDENT, and will continue to be so deprived for the
4 remainder of their natural lives. The aforementioned acts and omissions also caused
5 DECEDENT's pain and suffering, loss of enjoyment of life, and death.

6 86. Accordingly, Defendants CITY and DOES 8-10 are liable to Plaintiffs
7 for compensatory damages under 42 U.S.C. § 1983.

8 87. Plaintiffs bring this claim both individually and as successors-in-
9 interest to DECEDENT. Plaintiffs seek survival damages, including for the nature
10 and extent of DECEDENT's injuries, pre-death pain and suffering, emotional
11 distress, and loss of life and enjoyment of life, as well as wrongful death damages,
12 attorneys' fees, and costs under this claim.

13 88. The conduct of Defendants DOES 8-10 was malicious, oppressive and
14 in reckless disregard for the rights and safety of DECEDENT and Plaintiffs and
15 warrants the imposition of exemplary and punitive damages as to DOES 8-10.

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17 **EIGHTH CLAIM FOR RELIEF**

18 **False Arrest/False Imprisonment** (survival and wrongful death)

19 (Against Defendants CITY, EWING and GUTIERREZ)

20 89. Plaintiffs repeat and re-allege each and every allegation in the prior
21 paragraphs of this Complaint with the same force and effect as if fully set forth
22 herein.

23 90. Defendants lacked reasonable suspicion to detain and probable cause to
24 arrest DECEDENT.

25 91. Defendants EWING and GUTIERREZ intentionally deprived
26 DECEDENT of his freedom of movement by use of force, threats of force, menace,
27 fraud, deceit, and unreasonable duress when they when they trained their weapons
28 on him and then shot him multiple times with both lethal and less-than-lethal

1 rounds, thereby seizing him, and also when they handcuffed DECEDENT after their
2 uses of force, without probable cause.

3 92. The conduct of EWING and GUTIERREZ was a substantial factor in
4 causing the harm to DECEDENT.

5 93. As a result of their misconduct, EWING and GUTIERREZ are liable
6 for DECEDENT's injuries, either because they were integral participants in the false
7 arrest/false imprisonment, or because they failed to intervene to prevent these
8 violations.

9 94. At all relevant times, EWING and GUTIERREZ were working as
10 police officers for the City of San Bernardino Police Department and were acting
11 within the course and scope of their duties as police officers for the CITY.

12 95. Defendant CITY is vicariously liable for the wrongful acts of EWING
13 and GUTIERREZ pursuant to section 815.2(a) of the California Government Code,
14 which provides that a public entity is liable for the injuries caused by its employees
15 within the scope of the employment if the employee's act would subject him or her
16 to liability.

17 96. The conduct of EWING and GUTIERREZ was malicious, wanton,
18 oppressive, and accomplished with a conscious disregard for the rights of
19 DECEDENT, entitling Plaintiff to an award of exemplary and punitive damages as
20 to the individual defendants.

21 97. All Plaintiffs bring this claim individually and as successors in interest
22 to DECEDENT, and seek both survival damages and wrongful death damages under
23 this claim.

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NINTH CLAIM FOR RELIEF

Battery (wrongful death and survival claim)

(Against Defendants CITY, EWING and GUTIERREZ)

98. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

99. The uses of force by EWING and GUTIERREZ, including the Taser deployment and the lethal shots, were excessive, unreasonable, unjustified, inappropriate, and contrary to basic police training. DECEDENT posed no immediate threat of death or serious bodily injury to any person during this incident, including during the use of the uses of force. DECEDENT held a wooden cross or object during this incident, but he was not armed with a knife, gun or other weapon.

100. EWING and GUTIERREZ failed to give DECEDENT a verbal warning before deploying their Tasers, even though it would have been feasible to do so. It also would have been feasible for EWING to give DECEDENT a verbal warning that deadly force would be used prior to shooting him, but EWING failed to do so, in violation of basic police training and standards.

101. The officers escalated the situation when they Tased DECEDENT. A reasonably well-trained officer in the position of EWING and GUTIERREZ would have known that DECEDENT was mentally ill or experiencing a mental crisis and would have known, based on police training, that deploying a Taser against a person who is mentally ill or experiencing a mental crisis would escalate the situation.

102. As a direct and proximate result of the conduct of EWING and GUTIERREZ, as alleged above, DECEDENT sustained injuries, died from his injuries and also lost his earning capacity. As a direct and proximate result of the conduct of EWING and GUTIERREZ as alleged above, DECEDENT suffered survival damages pursuant to Code of Civil Procedure Section 377.34.

1 commands, giving warnings, and not using any force unless necessary, using less
2 than lethal options, and only using deadly force as a last resort.

3 109. The uses of force by EWING and GUTIERREZ, including the Taser
4 deployment and the lethal shots, were negligent and contrary to basic police
5 training. DECEDENT posed no immediate threat of death or serious bodily injury to
6 any person during this incident, including during the use of the uses of force.
7 DECEDENT held a wooden cross or object during this incident, but he was not
8 armed with a knife, gun or other weapon.

9 110. EWING and GUTIERREZ negligently failed to give DECEDENT a
10 verbal warning before deploying their Tasers, even though it would have been
11 feasible to do so. It also would have been feasible for EWING to give DECEDENT
12 a verbal warning that deadly force would be used prior to shooting him, but EWING
13 failed to do so, in violation of basic police training and standards.

14 111. In violation of their police training, the officers escalated the situation
15 when they Tased DECEDENT. Properly trained police officers are taught recognize
16 signs of mental illness and taught to de-escalate situations involving a mentally ill
17 individual or a person who is experiencing a mental crisis. A reasonably well-
18 trained officer in the position of EWING and GUTIERREZ would have known that
19 DECEDENT was mentally ill or experiencing a mental crisis and would have
20 known, based on police training, that deploying a Taser against a person who is
21 mentally ill or experiencing a mental crisis would escalate the situation

22 112. Defendants EWING and GUTIERREZ breached their duty of care.
23 The actions and inactions of Defendants EWING and GUTIERREZ were negligent
24 and reckless, including but not limited to:

- 25 (a) the failure to properly and adequately assess the need to use
26 force against DECEDENT, and negligent use of the Taser and
27 negligent use of deadly force;
28

- (b) the negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence and the failure to properly handle a situation with a mentally ill individual or a person who is undergoing a mental crisis;
- (c) the negligent detention, negligent arrest, negligent failure to give a warning prior to using force, and the negligent use of force, including deadly force, against DECEDENT;
- (d) the failure to provide prompt medical care to DECEDENT after the shooting;
- (e) the failure to properly train and supervise employees, both professional and non-professional, including EWING and GUTIERREZ; and
- (f) the negligent communication of information during the incident.

113. As a direct and proximate result of Defendants' conduct as alleged above, and other undiscovered negligent conduct, DECEDENT was caused to suffer severe pain and suffering and ultimately died. Also as a direct and proximate result of Defendants' conduct as alleged above, Plaintiffs have suffered emotional distress and mental anguish. Plaintiffs also have been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their natural lives.

114. At all relevant times, EWING and GUTIERREZ were working as police officers for the City of San Bernardino Police Department and were acting within the course and scope of their duties as police officers for the CITY.

115. Defendant CITY is vicariously liable for the wrongful acts of EWING, GUTIERREZ, and DOES 3-10 pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries

1 caused by its employees within the scope of the employment if the employee's act
2 would subject him or her to liability.

3 116. All Plaintiffs bring this claim individually and as successors in interest
4 to DECEDENT, and seek both wrongful death and survival damages under this
5 claim.

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7
8 **ELEVENTH CLAIM FOR RELIEF**

9 **(Violation of Cal. Civil Code § 52.1)**

10 (Against all Defendants)

11 117. Plaintiffs repeat and re-allege each and every allegation in the prior
12 paragraphs of this Complaint with the same force and effect as if fully set forth
13 herein.

14 118. California Civil Code, Section 52.1 (the Bane Act), prohibits any
15 person from using violent acts or threatening to commit violent acts in retaliation
16 against any person for exercising that person's constitutional rights, which can be
17 shown by a reckless disregard for that person's civil rights. EWING and
18 GUTIERREZ intended to interfere with DECEDENT's constitutional rights, did
19 successfully interfere with DECEDENT's constitutional rights, and also acted with
20 reckless disregard for DECEDENT's constitutional rights.

21 119. Defendants EWING and GUTIERREZ intentionally committed and
22 attempted to commit acts of violence against DECEDENT.

23 120. On information and belief, Defendants intentionally committed the
24 above acts to discourage DECEDENT from exercising his civil rights, to retaliate
25 against him for invoking such rights, or to prevent him from exercising such rights,
26 which he was fully entitled to enjoy.

1 121. On information and belief, DECEDENT reasonably believed and
2 understood that the violent acts committed by Defendants EWING and
3 GUTIERREZ were intended to discourage him from exercising his constitutional
4 rights, to retaliate against him for invoking such rights, or to prevent him from
5 exercising such rights.

6 122. The conduct of Defendants EWING and GUTIERREZ was a
7 substantial factor in causing DECEDENT's and Plaintiffs' harms, losses, injuries,
8 and damages.

9 123. At all relevant times, EWING and GUTIERREZ were working as
10 police officers for the City of San Bernardino Police Department and were acting
11 within the course and scope of their duties as police officers for the CITY.

12 124. Defendant CITY is vicariously liable for the wrongful acts of EWING,
13 GUTIERREZ, and DOES 3-10 pursuant to section 815.2(a) of the California
14 Government Code, which provides that a public entity is liable for the injuries
15 caused by its employees within the scope of the employment if the employee's act
16 would subject him or her to liability.

17 125. Defendants DOES 8-10 are vicariously liable under California law and
18 the doctrine of *respondeat superior*.

19 126. The conduct of Defendants was malicious, wanton, oppressive, and
20 accomplished with a conscious disregard for DECEDENT's and Plaintiffs' rights,
21 justifying an award of exemplary and punitive damages as to Defendants DOE
22 OFFICERS.

23 127. All Plaintiffs bring this claim as successors in interest to DECEDENT,
24 and seek survival damages under this claim. Plaintiffs seek attorney's fees and costs
25 under this claim pursuant to Cal. Civ. Code §52.1.
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JOSE ALVARADO, JIMENA ALVARADO, ERIKA ALVARADO, and MARCOS ALVARADO request entry of judgment in their favor and against Defendants CITY OF SAN BERNARDINO, ZACK EWING, CARLA GUTIERREZ, and DOES 3-10, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: September 27, 2024

LAW OFFICES OF DALE K. GALIPO
/s/ Dale K. Galipo

Dale K. Galipo
Renee V. Masongsong
Attorneys for Plaintiff

DATED: September 27, 2024

LAW OFFICES OF SHARON J. BRUNNER

/s/ Sharon J. Brunner

Sharon J. Brunner
Attorneys for Plaintiffs

///

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1 DATED: September 27, 2024

LAW OFFICES OF JAMES S. TERRELL

2 /s/ James S. Terrell

3 James S. Terrell

4 *Attorneys for Plaintiffs*

DEMAND FOR JURY TRIAL

Plaintiffs JOSE ALVARADO, JIMENA ALVARADO, ERIKA
ALVARADO, and MARCOS ALVARADO hereby demand a trial by jury.

DATED: September 27, 2024

LAW OFFICES OF DALE K. GALIPO

s/ Dale K. Galipo

Dale K. Galipo

Renee V. Masongsong

Attorneys for Plaintiff

DATED: September 27, 2024

LAW OFFICES OF JAMES S. TERRELL

s/ James S. Terrell

James S. Terrell

Attorneys for Plaintiffs

DATED: September 27, 2024

LAW OFFICES OF SHARON J. BRUNNER

s/ Sharon J. Brunner

Sharon J. Brunner

Attorneys for Plaintiffs